

# REVISED DRAFT – 6/03/2004

## POST 2006 INITIATIVE -- UTILITY SERVICE OBLIGATIONS WORKING GROUP

This document contains provisions of Illinois law that address or relate to certain utility service and other obligations. It also includes language that provides some of the framework of the underlying law. This document is not intended to be a comprehensive overview of relevant Illinois law, nor is it intended to be a full discussion of the obligations addressed. It does not reflect agreement as to the meaning or applicability of the sections cited. Instead, it is intended as a brief overview and starting point for discussions of the Service Obligations working group. Finally, this document is not intended to be legal advice; as always, for legal advice contact a lawyer.

### **Overview of Current Illinois Law**

**In passing Article 16 of the Public Utilities Act, the General Assembly contemplated the utility service obligations for both the transition period and the post-transition period. Article 16, which has no sunset provision, sets out many of the utility service obligations for the post-transition period. Further, the service requirements of the remainder of the Act continue to apply:**

“Except to the extent modified or supplemented by the provisions of this Article, or where the context clearly renders such provisions inapplicable, the other Articles of the Public Utilities Act pertaining to public utilities, public utility rates and services and the regulation thereof, are fully and equally applicable to the tariffed services electric utilities provide.”

-- Sec. 16-101(a)

**Therefore, as requested by comments, this handout looks at the continuing utility service obligations outside of Article 16.**

### **Service Obligations Outside Of Article 16**

“Findings and Intent. The General Assembly finds that the health, welfare and prosperity of all Illinois citizens require the provision of adequate, efficient, reliable, environmentally safe and least-cost public utility services at prices which accurately reflect the long-term cost of such services and which are equitable to all citizens. It is therefore declared to be the policy of the State that public utilities shall continue to be regulated effectively and comprehensively. It is further declared that the goals and objectives of such regulation shall be to ensure

(a) Efficiency: the provision of reliable energy services at the least possible cost to the citizens of the State; in such manner that:

- (i) physical, human and financial resources are allocated efficiently;
- (ii) all supply and demand options are considered and evaluated using comparable terms and methods in order to determine how utilities shall meet their customers' demands for public utility services at the least cost;
- (iii) utilities are allowed a sufficient return on investment so as to enable them to attract capital in financial markets at competitive rates;
- (iv) tariff rates for the sale of various public utility services are authorized such that they accurately reflect the cost of delivering those services and allow utilities to recover the total costs prudently and reasonably incurred;
- (v) variation in costs by customer class and time of use is taken into consideration in authorizing rates for each class.

...

(c) Reliability: the ability of utilities to provide consumers with public utility services under varying demand conditions in such manner that suppliers of public utility services are able to provide service at varying levels of economic reliability giving appropriate consideration to the costs likely to be incurred as a result of service interruptions, and to the costs of increasing or maintaining current levels of reliability consistent with commitments to consumers.

(d) Equity: the fair treatment of consumers and investors in order that

- (i) the public health, safety and welfare shall be protected;
- (ii) the application of rates is based on public understandability and acceptance of the reasonableness of the rate structure and level;
- (iii) the cost of supplying public utility services is allocated to those who cause the costs to be incurred;
- (iv) if factors other than cost of service are considered in regulatory decisions, the rationale for these actions is set forth;
- (v) regulation allows for orderly transition periods to accommodate changes in public utility service markets;
- (vi) regulation does not result in undue or sustained adverse impact on utility earnings;
- (vii) the impacts of regulatory actions on all sectors of the State are carefully weighed;
- (viii) the rates for utility services are affordable and therefore preserve the availability of such services to all citizens."

-- Sec. 1-102

**"Duties of public utilities; nondiscrimination.** A public utility shall furnish, provide, and maintain such service instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and public and as shall be in all

respects adequate, efficient, just, and reasonable. All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

A public utility shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto, suitable facilities and service, without discrimination and without delay....”

-- Sec. 8-101

## **RELATED JUST AND REASONABLE RATES PROVISION:**

“All rates or other charges made, demanded or received by any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. All rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable.”

-- Sec. 9-101

## **Article XVI**

“Competitive forces are affecting the market for electricity as a result of recent federal regulatory and statutory changes and the activities of other states. Competition in the electric services market may create opportunities for new products and services for customers and lower costs for users of electricity. Long-standing regulatory relationships need to be altered to accommodate the competition that could fundamentally alter the structure of the electric services market.

“With the advent of increasing competition in this industry, the State has a continued interest in assuring that the safety, reliability, and affordability of electrical power is not sacrificed to competitive pressures, and to that end, intends to implement safeguards to assure that the industry continues to operate the electrical system in a manner that will serve the public's interest. Under the existing regulatory framework, the industry has been encouraged to undertake certain investments in its physical plant and personnel to enhance its efficient operation, the cost of which it has been permitted to pass on to consumers. The State has an interest in providing the existing utilities a reasonable opportunity to obtain a return on certain investments on which they depended in undertaking those commitments in the first instance while, at the same time, not permitting new entrants into the industry to take unreasonable advantage of the investments made by the formerly regulated industry.

“A competitive wholesale and retail market must benefit all Illinois citizens. The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Consumer protections must be in place to ensure that all customers continue to receive safe, reliable, affordable, and environmentally safe electric service.

“All consumers must benefit in an equitable and timely fashion from the lower costs for electricity that result from retail and wholesale competition and receive sufficient information to

make informed choices among suppliers and services. The use of renewable resources and energy efficiency resources should be encouraged in competitive markets.”

-- 16-101A(b)-(e)

## **Article 16 Utility Obligation To Offer Tariffed Services**

**Utility must continue to offer the tariffed services it offered prior to the December 16, 1997:**

“An electric utility shall continue offering to retail customers each tariffed service that it offered as a distinct and identifiable service on the effective date of this amendatory Act of 1997 until the service is (i) declared competitive pursuant to Section 16-113, or (ii) abandoned pursuant to Section 8-508. Nothing in this subsection shall be construed as limiting an electric utility's right to propose, or the Commission's power to approve, allow or order modifications in the rates, terms and conditions for such services pursuant to Article IX or Section 16-111 of this Act.”

-- Sec. 16-103(a).

“The Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section, and shall not require an electric utility to offer any competitive service.”

-- Sec. 16-103(e).

### **Requirements to abandon service:**

“Except as provided in Section 12-306, no public utility shall abandon or discontinue any service or, in the case of an electric utility, make any modification as herein defined, without first having secured the approval of the Commission...”

-- Sec. 8-508

### **Requirements to declare a tariffed service competitive...**

“An electric utility may, by petition, request the Commission to declare a tariffed service provided by the electric utility to be a competitive service. The electric utility shall give notice of its petition to the public in the same manner that public notice is provided for proposed general increases in rates for tariffed services, in accordance with rules and regulations prescribed by the Commission. The Commission shall hold a hearing on the petition if a hearing is deemed necessary by the Commission. The Commission shall declare the service to be a competitive service for some identifiable customer segment or group of customers, or some clearly defined geographical area within the electric utility's service area, if the service or a reasonably equivalent substitute service is reasonably available to the customer segment or group or in the defined geographical area at a comparable price from one or more providers other than the electric utility or an affiliate of the electric utility, and the electric utility has lost or there is a reasonable likelihood that the electric utility will lose business for the service to the other provider or providers.... In determining whether to grant or deny a petition to declare the provision of electric power and energy competitive, the Commission shall consider, in applying the above criteria, whether there is adequate transmission capacity into the service area of the

petitioning electric utility to make electric power and energy reasonably available to the customer segment or group or in the defined geographical area from one or more providers other than the electric utility or an affiliate of the electric utility, in accordance with this subsection.”

-- Sec. 16-113(a)

“Any customer except a customer identified in subsection (c) of Section 16-103 who is taking a tariffed service that is declared to be a competitive service pursuant to subsection (a) of this Section shall be entitled to continue to take the service from the electric utility on a tariffed basis for a period of 3 years following the date that the service is declared competitive, or such other period as is stated in the electric utility's tariff pursuant to Section 16-110. This subsection shall not require the electric utility to offer or provide on a tariffed basis any service to any customer (except those customers identified in subsection (c) of Section 16-103) that was not taking such service on a tariffed basis on the date the service was declared to be competitive.”

-- Sec. 16-113(b)

**When/if power and energy for Residential and Small Commercial customers (15,000 kWh annual usage or less) is declared competitive, the Utility must continue to provide these customers with bundled service.**

“Notwithstanding any other provision of this Article, each electric utility shall continue offering to all residential customers and to all small commercial retail customers in its service area, as a tariffed service, bundled electric power and energy delivered to the customer's premises consistent with the bundled utility service provided by the electric utility on the effective date of this amendatory Act of 1997. Upon declaration of the provision of electric power and energy as competitive, the electric utility shall continue to offer to such customers, as a tariffed service, bundled service options at rates which reflect recovery of all cost components for providing the service.

For those components of the service which have been declared competitive, cost shall be the market based prices. Market based prices as referred to herein shall mean, for electric power and energy, either (i) those prices for electric power and energy determined as provided in Section 16-112, or (ii) the electric utility's cost of obtaining the electric power and energy at wholesale through a competitive bidding or other arms-length acquisition process.”

-- Sec. 16-103(c).

**The Utility must allow Residential and Small Commercial customers to return to bundled service, even after that service has been declared competitive.**

“Any residential or small commercial retail customer which elects delivery services is entitled to return to the electric utility's bundled utility tariffed service offering provided in accordance with subsection (c) of this Section upon payment of a reasonable administrative fee which shall be set forth in the tariff, provided, however, that the electric utility shall be entitled to impose the condition that such customer may not elect delivery services for up to 24 months thereafter.”

-- Sec. 16-103(d)

## **DELIVERY SERVICE AND RELATED OBLIGATIONS:**

“An electric utility shall also offer, as tariffed services, delivery services in accordance with this Article, the power purchase options described in Section 16-110 and real-time pricing as provided in Section 16-107.”

-- Sec. 16-103(b)

### **Delivery Service Tariff obligation:**

“An electric utility shall file a delivery services tariff with the Commission at least 210 days prior to the date that it is required to begin offering such services pursuant to this Act. An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by that Commission. The Commission shall otherwise have the authority pursuant to Article IX to review, approve, and modify the prices, terms and conditions of those components of delivery services not subject to the jurisdiction of the Federal Energy Regulatory Commission, including the authority to determine the extent to which such delivery services should be offered on an unbundled basis. In making any such determination the Commission shall consider, at a minimum, the effect of additional unbundling on (i) the objective of just and reasonable rates, (ii) electric utility employees, and (iii) the development of competitive markets for electric energy services in Illinois.”

-- Sec. 16-108(a)

“An electric utility shall provide delivery services to retail customers in accordance with the provisions of this Section.

(a) Each electric utility shall offer delivery services to retail customers located in its service area in accordance with the following provisions....

(3) On or before December 31, 2000, the electric utility shall offer delivery services to all remaining nonresidential retail customers in its service area.

(4) On or before May 1, 2002, the electric utility shall offer delivery services to all residential retail customers in its service area.

-- Sec. 16-104.

### **Real Time pricing tariff obligation:**

“‘Real-time pricing’ means charges for delivered electric power and energy that vary on an hour-to-hour basis for nonresidential retail customers and that vary on a periodic basis during the day for residential retail customers.”

-- Sec 16-102

“(a) Each electric utility shall file, on or before May 1, 1998, a tariff or tariffs which allow nonresidential retail customers in the electric utility's service area to elect real-time pricing beginning October 1, 1998.

(b) Each electric utility shall file, on or before May 1, 2000, a tariff or tariffs which allow residential retail customers in the electric utility's service area to elect real-time pricing beginning October 1, 2000.

(c) The electric utility's tariff or tariffs filed pursuant to this Section shall be subject to Article IX."

-- Sec. 16-107.

**Post-Transition period Power Purchase Option obligation:**

"After the transition charge period applicable to a non-residential delivery services customer, and until the provision of electric power and energy is declared competitive for the customer group to which the customer belongs, a non-residential delivery services customer that paid any transition charges it was legally obligated to pay to an electric utility shall be permitted to purchase electric power and energy from the electric utility for contract periods of one year at a price or prices equal to the sum of (i) the market value determined for that customer's class pursuant to Section 16-112 and (ii) to the extent it is not included in such market value, a fee to compensate the electric utility for the service of arranging the supply or purchase of such electric power and energy. The electric utility may require that a delivery services customer give the following notice for such a purchase..."

-- Sec. 16-110(c).

"After the transition charge period applicable to a non-residential delivery services customer, and until the provision of electric power and energy is declared competitive for the customer group to which the customer belongs, a non-residential delivery services customer, other than a small commercial retail customer, that paid any transition charges it was legally obligated to pay to an electric utility shall be permitted to purchase electric power and energy from the electric utility for contract periods of one year at a price or prices equal to (A) the sum of (i) the electric utility's actual cost of procuring such electric power and energy and (ii) a broker's fee to compensate the electric utility for arranging the supply, or, if the utility so elects, (B) the market value of electric power or energy provided by the electric utility determined as set forth in the electric utility's tariff for that customer's class. The electric utility may require that the delivery services customer give up to 30 days notice for such a purchase."

-- Sec. 16-110(d).

"Each delivery services customer purchasing electric power and energy from the electric utility pursuant to a tariff filed in accordance with this Section shall also pay all of the applicable charges set forth in the electric utility's delivery services tariffs and any other tariffs applicable to the services provided to that customer by the electric utility."

-- Sec. 16-110(e).

**Aggregation obligation:**

The electric utility shall allow the aggregation of loads that are eligible for delivery services so long as such aggregation meets the criteria for delivery of electric power and energy applicable

to the electric utility established by the regional reliability council to which the electric utility belongs, by an independent system operating organization to which the electric utility belongs, or by another organization responsible for overseeing the integrity and reliability of the transmission system, as such criteria are in effect from time to time. The Commission may adopt rules and regulations governing the criteria for aggregation of the loads utilizing delivery services, but its failure to do so shall not preclude any eligible customer from electing delivery services. The electric utility shall allow such aggregation for any voluntary grouping of customers, including without limitation those having a common agent with contractual authority to purchase electric power and energy and delivery services on behalf of all customers in the grouping.

-- Sec. 16-104(b).

#### **Cogeneration obligations:**

“An electric utility shall allow a retail customer that generates power for its own use to include the electrical demand obtained from the customer's cogeneration or self-generation facilities that is coincident with the retail customer's maximum monthly electrical demand on the electric utility's system in any determination of the customer's maximum monthly electrical demand for purposes of determining when such retail customer shall be offered delivery services pursuant to clause (i) of subparagraph (1) of subsection (a) of this Section.”

-- Sec. 16-104(c)

#### **Partial Requirements Service obligation:**

“Subject to the terms and conditions which the electric utility is entitled to impose in accordance with Section 16-108, a retail customer that is eligible to elect delivery services pursuant to subsection (a) may place all or a portion of its electric power and energy requirements on delivery services.”

-- Sec. 15-104(e).

#### **Consolidated billing provision for established intergovernmental agreement participants:**

“(a) The tariffs of each electric utility serving at least 1,000,000 customers shall permit governmental customers acting through an intergovernmental agreement that was in effect 30 days prior to the date specified in subsection (b) and which provides for these governmental customers to work cooperatively in the purchase of electric energy to aggregate their monthly kilowatt-hour energy usage and monthly kilowatt billing demand.

(b) In implementing the provisions of this Section, the rates and charges applicable under the combined billing tariff of the serving utility in effect on May 1, 1997 shall apply to all load of eligible government customers selected by the governmental customers including, but not limited to, load served under contract.

(c) For purposes of this Section, "governmental customers" shall mean any customer that is a municipality, municipal corporation, unit of local government, park district, school district, community college district, forest preserve district, special district, public corporation,

body politic and corporate, sanitary or water reclamation district, or other local government agencies, including any entity created by intergovernmental agreement among any of the foregoing entities to implement the arrangements permitted by subsections (a) and (b) of this Section.

(d) Electric utilities shall file tariffs that comply with the requirements of this Section within 60 days after the effective date of this amendatory Act of 1997.”

-- Sec. 16-125A

## **Select Provisions Related to Alternative Retail Electric Suppliers:**

“[T]o the extent an electric utility provides electric power and energy or delivery services to alternative retail electric suppliers and such services are not subject to the jurisdiction of the Federal Energy Regulatory Commission, and are not competitive services, they shall be provided through tariffs that are filed with the Commission, pursuant to Article IX of this Act. Each electric utility shall permit alternative retail electric suppliers to interconnect facilities to those owned by the utility provided they meet established standards for such interconnection, and may provide standby or other services to alternative retail electric suppliers. The alternative retail electric supplier shall sign a contract setting forth the prices, terms and conditions for interconnection with the electric utility and the prices, terms and conditions for services provided by the electric utility to the alternative retail electric supplier in connection with the delivery by the electric utility of electric power and energy supplied by the alternative retail electric supplier.”

-- Sec. 16-118(a)

“An electric utility shall file a tariff pursuant to Article IX of the Act that would allow alternative retail electric suppliers or electric utilities other than the electric utility in whose service area retail customers are located to issue single bills to the retail customers for both the services provided by such alternative retail electric supplier or other electric utility and the delivery services provided by the electric utility to such customers.”

-- Sec. 16-118(b)

## **Related Provisions of Article XVI**

**After the transition period, rate proceedings for tariffed services are governed by Article IX and the following provision:**

“Subsequent to the mandatory transition period, the Commission, in any proceeding to establish rates and charges for tariffed services offered by an electric utility, shall consider only

- (1) the then current or projected revenues, costs, investments and cost of capital directly or indirectly associated with the provision of such tariffed services;

- (2) collection of transition charges in accordance with Sections 16-102 and 16-108 of this Act;
- (3) recovery of any employee transition costs as described in Section 16-128 which the electric utility is continuing to incur, including recovery of any unamortized portion of such costs previously incurred or committed, with such costs to be equitably allocated among bundled services, delivery services, and contracts with alternative retail electric suppliers; and
- (4) recovery of the costs associated with the electric utility's compliance with decommissioning funding requirements; and shall not consider any other revenues, costs, investments or cost of capital of either the electric utility or of any affiliate of the electric utility that are not associated with the provision of tariffed services.

In setting rates for tariffed services, the Commission shall equitably allocate joint and common costs and investments between the electric utility's competitive and tariffed services. In determining the justness and reasonableness of the electric power and energy component of an electric utility's rates for tariffed services subsequent to the mandatory transition period and prior to the time that the provision of such electric power and energy is declared competitive, the Commission shall consider the extent to which the electric utility's tariffed rates for such component for each customer class exceed the market value determined pursuant to Section 16-112, and, if the electric power and energy component of such tariffed rate exceeds the market value by more than 10% for any customer class, may establish such electric power and energy component at a rate equal to the market value plus 10%. In any such case, the Commission may also elect to extend the provisions of Section 16-111(e) for any period in which the electric utility is collecting transition charges, using information applicable to such period.”

-- Sec. 16-111(i).